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ILLINOIS COMMERCE COMMISSION

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BEFORE THE ILLINOIS COMMERCE COMMISSION
ILLINOIS COMMERCE COMMISSION

2005 SEP 21 P 12:43

In the matter of the Joint Application of)

CHIEF CLERK'S OFFICE

COMTEL TELCOM ASSETS LP)

and)

Docket No. 05-0610

VARTEC TELECOM, INC., EXCEL)

TELECOMMUNICATIONS, INC. AND)

VARTEC SOLUTIONS, INC.)

for Approval of a Transfer of Assets)

JOINT APPLICATION FOR CONSENT TO TRANSFER ASSETS

Pursuant to the rules and regulations of the Illinois Commerce Commission ("Commission"), Comtel Telcom Assets LP ("Comtel") and VarTec Telecom, Inc. ("VarTec"), Excel Telecommunications, Inc., ("Excel") and VarTec Solutions, Inc. ("VarTec Solutions") (together, the "VarTec Companies") (collectively with Comtel, the "Applicants") hereby notify and jointly petition the Commission for the approval to complete the acquisition by Comtel of certain assets of the VarTec Companies and to grant all relief requested herein to allow for the

consummation of the transaction without undue delay. In support of this Application, the following is stated:

I. The Parties

A. Comtel

Comtel is a limited partnership organized under the laws of the State of Texas. A copy of the Certificate of Filing issued to Comtel by the Office of the Secretary of State in Texas is attached hereto as Exhibit A. The corporate contact information for Comtel is as follows:

c/o Paul Winters

500 Boylston Street, 17th Floor

Boston, Massachusetts 02116

Telephone: (617) 603-3508

Facsimile: (617) 603-3509

Questions concerning Comtel or this filing may be addressed to the following representative through any of the contact methods below, including electronic:

Jeffrey A. Marks
Jessica W. Hafer
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
e-mail: jeffrey.marks@lw.com
jessica.hafer@lw.com

Comtel's registered agent within Illinois is as follows: National Corporate Research, Ltd., 188 West Edwards, Suite 200, Springfield, Illinois 62704.

A corporate organizational chart for Comtel is attached hereto as Exhibit B, and a list of its officers is attached as Exhibit C. Comtel is a newly formed limited partnership whose principal business will be telecommunications. Its general partner, Comtel Assets Inc. ("Comtel Inc."), is a Texas corporation and owns 1% of the equity of Comtel. Comtel's limited partner, Comtel Assets Corp. ("Comtel Corp."), is a Delaware corporation, which owns 99% of the equity of Comtel. Comtel Inc. and Comtel Corp. are corporate holding companies located at c/o 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

Comtel Inc. and Comtel Corp. are both 100% owned by Sowood Commodity Partners Fund III LP ("Sowood Fund III"), an investment company organized in Delaware as a limited partnership. Sowood Commodity Partners GP III LP ("Sowood GP III LP") is a Delaware limited partnership, and it is the sole general partner of Sowood Fund III with a 0.2% equity interest and operating control. The principal business of Sowood GP III LP is to serve as a corporate holding company, and it is located at 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

The remaining equity of Sowood Fund III is held by Harvard Private Capital Holdings ("HPCH"), a passive, institutional investor. HPCH's principal business is serving as an investment company. It is owned and controlled by the President and Fellows of Harvard University, a tax-exempt educational and research institution based in Cambridge, Massachusetts.¹ The address of HPCH is c/o Harvard Management Company, 600 Atlantic Avenue, Boston, Massachusetts 02210.

Four individuals hold limited partnership interests in Sowood GP III LP, and those individuals own 99% of the equity in the limited partnership. The business address for these individuals is as follows: c/o 500 Boylston Street, 17th

¹ Harvard University is an educational and research institution with tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. According to the Harvard University Annual Financial Report for Fiscal Year 2004, income from the University's endowment is Harvard's largest source of operating income. Harvard Management Company ("HMC") is responsible for investing the assets of the endowment to meet the University's needs. HMC is a subsidiary of Harvard and is governed by a board of directors appointed by President and Fellows of Harvard University. According to the Annual Report, HMC oversees, among other investments, some 170 different private equity funds, managed by 60 different external management teams.

Floor, Boston, Massachusetts 02116.

The general partner of Sowood GP III LP, with a 1% interest and operating control, is Sowood GP III LLC, a Delaware limited liability company. The principal business of Sowood GP III LCC is to serve as a management company. The address of Sowood GP III LLC is as follows: 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

The sole managing member of Sowood GP III LLC is Jeff Larson. Sowood GP III LLC also has three non-managing members: Stu Porter, Rick Dowd and Megan Kelleher.

B. The VarTec Companies

VarTec and Excel are corporations organized under the laws of the State of Texas. VarTec Solutions, which formerly operated under the corporate names, eMeritus Communications, Inc., Teleglobe Business Solutions, Inc. and Telco Holdings, Inc. d/b/a Dial & Save, is a Delaware corporation. The principal office of the VarTec Companies is located at the following address:

2440 Marsh Lane

Carrollton, Texas 75006

Telephone: (972) 478-3000

Facsimile: (972) 478-3310

Questions concerning the VarTec Companies or this filing may be addressed to the following representative through any of the contact methods below, including electronic:

Becky Gipson

Director, Regulatory Affairs

VarTec Telecom, Inc.

2440 Marsh Lane

Telephone: (972) 478-3309

Facsimile: (972) 478-3310

e-mail: bgipson@vartec.net

The VarTec Companies are privately-held corporations. VarTec Telecom Holding Company ("VarTec Holding"), a wholly-owned subsidiary of VarTec, holds 100% of the stock of Excelcom, Inc. ("Excelcom") and Telco Communications Group, Inc. ("Telco"). Excelcom is the direct and sole shareholder of Excel, and Telco is the direct and sole shareholder of VarTec Solutions. VarTec Holding and Excelcom are Delaware corporations, and Telco is organized in Virginia. Each is a holding company located at 2440 Marsh Lane, Carrollton, Texas 75006.

The Commission has authorized VarTec, Excel and VarTec Solutions to

provide competitive local exchange and interexchange services in Illinois. VarTec was authorized by the Commission to provide resold interexchange intraMSA and interMSA telecommunications services in Docket No. 92-0313 and resold and facilities-based local exchange telecommunications services in Docket No. 01-0594. Excel was granted the same authorizations in Docket Nos. 91-0149 (interexchange), 96-0301 (resold local exchange) and 02-0247 (facilities-based local exchange). VarTec Solutions received its authorization to provide resold interexchange intraMSA and interMSA telecommunications services in Docket No. 95-0043, and the Commission granted VarTec Solutions the authority to provide resold local exchange services in Docket No. 96-0280. Both of these certificates were issued under VarTec Solutions' former name, Dial & Save. The Commission also specifically granted VarTec the authority to provide resold commercial mobile services in Docket No. 03-0558.

Furthermore, VarTec and Excel are authorized to provide local exchange, interexchange, operator and wireless services within and throughout the United States, and VarTec Solutions is authorized to provide interexchange services within the contiguous United States. VarTec Solutions' local exchange authority is limited to Illinois and certain other states, although it has not yet commenced providing local exchange services in any jurisdiction. In addition, the Commission has authorized VarTec to provide interexchange services to Illinois consumers under the trade name, Clear Choice Communications. Both VarTec, including Clear Choice Communications, and Excel primarily provide

telecommunications services to residential customers, while VarTec Solutions serves commercial customers.

The VarTec Companies voluntarily filed for Chapter 11 bankruptcy on November 1, 2004 in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (the "Court") consolidated under Case No. 04-81694-HDH-11. As part of the bankruptcy process, the VarTec Companies have entered into the below-described asset purchase agreement ("APA") with Comtel Investments LLC ("Comtel Investments"). Comtel Investments, which is wholly owned by the same parties who own and control Comtel, has assigned its rights and obligations under the APA to Comtel as of August 1, 2005. The APA was executed on July 25, 2005 and was approved by the Court on July 27, 2005.²

II. The Transaction

As noted above, the VarTec Companies are operating under bankruptcy protection. Through the APA and the Court-approved auction process, Comtel will ultimately acquire substantially all of the assets of the VarTec Companies, including all telecommunications equipment, customer accounts and records, business records and licenses and permits. The APA provides that the ultimate transfer of the acquired telecommunications and associated operating assets is subject to the necessary regulatory

² See Case No. 04-81694-HDH-11, Order Granting Motion (A) Approving the Sale Free and Clear of All Liens, Claims, Rights, Interests and Encumbrances to Comtel Investments LLC and (B) Granting Related Relief (Substantially All of the Debtors' Remaining Assets) (entered July 29, 2005), available at http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-81694_1663.pdf.

approvals, including the approval of this Application. In addition, Comtel currently intends to obtain up to approximately \$20 to \$25 million in debt financing pending consummation of the proposed transaction to fund working capital and similar needs of the VarTec Companies. Upon consummation of the proposed transaction, Comtel currently intends to replace such debt financing with a term (3 to 5 year) debt instrument. Based on Comtel's present understanding of the business, it anticipates that the term debt will be approximately \$50 million. This financing will assist with the day-to-day operations of Comtel as Comtel consummates its acquisition of the former VarTec Companies' operations, newly emerged from bankruptcy.

Once the proposed transaction is completed, the VarTec Companies will no longer hold authorizations to provide telecommunications services as described in Section I (B) above. These authorizations will be held by or assigned collectively to Comtel in order that Comtel can step into the shoes of the VarTec Companies, and the residential and commercial customers previously served by the VarTec Companies will continue to receive services without interruption. According to Comtel's initial plans for the business, the services provided and geographic areas served by Comtel will mirror those currently provided by the VarTec Companies, and any enhancements to the service offerings will be within the existing authority transferred to Comtel from the VarTec Companies. In order to minimize confusion and concern for customers, Comtel aims to make this transition seamless by operating under trade names and limiting all direct impacts to existing customers (e.g., no service changes are contemplated as part of this Application).

The interconnection and other network agreements currently allowing the VarTec Companies to provide local exchange and/or interexchange services will be transferred to Comtel, as necessary, to continue the Applicants' efforts to make a smooth transition for customers. Comtel also initially plans to maintain the VarTec Companies' existing tariffs on file with the Commission. Once the transaction is prepared for closing and the Commission has granted its approval, Comtel will simply modify the corporate name on the tariffs. This further supports Comtel's desire to transition the VarTec Companies' assets without interruption or burden on the existing customer base.

III. Request for Approval to Transfer Assets; Qualifications of Comtel

Through this Application, Comtel (FEIN# 20-3237782) requests that the Commission approve, as necessary, the transfer of assets as described in Section II above and simultaneously grant Comtel specific authority to operate as a provider of resold intraMSA and interMSA interexchange telecommunications services, facilities-based and resold local exchange services as well as resold wireless services, as necessary, within Illinois. Specifically, Comtel requests that the Commission-issued certificates of authority detailed in Section I(B) be transferred from the VarTec Companies to Comtel. Alternatively, in the event that the Commission requires new certifications for Comtel, Comtel requests that those be issued. In support of this request, Comtel has provided information, within this Application and its Exhibits, typically required of new applicants seeking authorization to provide telecommunications services.

The Applicants respectfully request that the Commission grant all waivers and rights held by the VarTec Companies as of the date of this filing to Comtel, and unless waived, Comtel certifies that it will abide by the applicable requirements set forth in 83 Ill. Admin. Code and the Illinois Public Utilities Act. If the Commission grants the necessary waivers requested above, Comtel will house its books and records in Carrollton, Texas and surrounding areas in the same or similar locations where the VarTec Companies currently reside and store records. As a new entrant into the telecommunications industry, Comtel confirms that it has not been denied a certificate of service or had its certification revoked or suspended in any jurisdiction for any reason, including due to complaints and/or judgments against Comtel. Furthermore, Comtel has not provided service under any other name prior to the filing of this Application, and no officer of Comtel has an ownership or other material interest in any telecommunications service provider authorized to provide service in the state of Illinois, although it is anticipated that certain members of Comtel's management team may have the opportunity to obtain non-controlling ownership interests in Comtel.

In addition, Comtel requests the authority to provide any and all of these services (i.e., resold intraMSA and interMSA interexchange telecommunications services, facilities-based and resold local exchange services as well as resold wireless services) under the trade names VarTec Telecom, Clear Choice Communications, Excel Telecommunications and VarTec Solutions, in addition to the Comtel name. This will maximize Comtel's available options under which it may begin its operations in the state. Attached hereto as Exhibit D please find a copy of Comtel's authorization to conduct

business in Illinois as issued by the Secretary of State.

Prior to finalizing this transaction, Comtel will notify the Commission of the planned closing date and will update the Commission on any staff, contact or other material changes at that time. Due to the nationwide nature of the VarTec Companies' current operations, Comtel expects to take control of all of the VarTec Companies' assets and associated operations once all regulatory approvals are obtained, rather than assuming these on a state-by-state basis.

Following the consummation of the asset transfer, Comtel will be led by a combination of its own management members and certain members of the existing management team of the VarTec Companies, who the Applicants currently expect will continue in management roles for Comtel after consummation of the transaction. Descriptions of the backgrounds of the key management members, which demonstrate extensive experience and expertise, are attached hereto and incorporated herein by reference as Exhibit E. In the event that these Company representatives change, Comtel will pursue other highly experienced executives to assume their roles to ensure that its management team is balanced and technically qualified. In addition to the executives included in Exhibit E, the Applicants also currently expect that the following, existing contact for all regulatory and consumer matters for the VarTec Companies will remain unchanged and will represent the ongoing business for Comtel after consummation of the transaction:

Becky Gipson

Director, Regulatory Affairs

VarTec Telecom, Inc.

2440 Marsh Lane

Telephone: (972) 478-3309

Facsimile: (972) 478-3310

e-mail: bgipson@vartec.net

regulatoryaffairs@vartec.net

As demonstrated in Exhibit F, Comtel, through Sowood Fund III, has the requisite financial ability to acquire the VarTec Companies' assets and become a strong competitor in the Illinois telecommunications marketplace. As a privately-held company, Comtel respectfully requests that the Commission protect Exhibit F of the Application from public inspection and treat the contents thereof as confidential because public disclosure of this information would place Comtel at an unfair business disadvantage. Comtel also requests that the Commission withhold from public inspection Exhibit F to the Application due to its proprietary nature. The information contained in the financial statements is only disclosed to banks, financial institutions and others on a need to know basis, and when such information is disclosed to them, it is done on a confidential basis. Making this information available would reveal information to the public and Comtel's competitors which would allow them to know Comtel's cash position, liabilities and other data which Comtel does not wish to disclose without a protective order. For these reasons, the Applicants have placed the contents of Exhibit F in a sealed envelope

attached to this Application and have labeled the information as confidential.

IV. Public Interest Considerations

Grant of this Application would serve the public interest, convenience and necessity by enabling the seamless continuation of telecommunications services to the VarTec Companies' existing Illinois customers. By allowing Comtel to assume control of the VarTec Companies' assets and to obtain the necessary authorizations to provide telecommunications services in Illinois, existing customers will have access to the services they enjoy today as well as the potential for expanded service offerings going forward. Due to financial restrictions, the VarTec Companies have performed extremely limited marketing, product research and other customer retention and acquisition efforts during 2004 and 2005. Such restrictions have minimized the competitive offerings introduced to the public and limited the VarTec Companies ability to invest in additional consumer service offerings. Consummation of the transaction will greatly increase the financial viability of the VarTec Companies' products and services.

Moreover, approval of the proposed transaction can be expected to serve the public interest by stimulating increased competition in the telecommunications market. As a new entrant into these markets, Comtel intends to compete efficiently and effectively using the well-established resources obtained through the APA. More effective competition has the net economic impact of lower consumer prices, combined with the introduction and availability of more consumer products and services.

IV. Request for Waiver of Slamming Rules

In further support of serving the public interest in association with this Application, the Applicants intend to provide any required customer notice of the transfer of assets to Comtel within the appropriate notice period. Such notice would take into account all relevant state and federal notification and consent requirements applicable to this transaction.

Additionally, out of an abundance of caution and to the extent necessary, the Applicants hereby request a *waiver from any applicable anti-slamming regulations* that may nevertheless be considered to have been violated by this transfer of assets being made without the specific authorization and verification of each affected customer. It would be impractical and burdensome to obtain the specific authorization of each customer to effect the proposed transaction. Such a process would significantly hinder the smooth transition of services. Because affected customers would not experience any change in the quality and scope of their services, and because of the Applicants' extreme efforts to make invoicing procedures, customer service and all other matters involving customers absolutely seamless, the notice correspondence will be sufficient to serve the public interest. The notice correspondence will describe the transaction in terms that are easy to understand and ensures that customers are made aware of all their service options going forward, along with other content as may be required. Accordingly, to the extent that the Commission deems necessary, the public interest would be served by the grant of a waiver of anti-slamming regulations applicable to this transaction. The Applicants

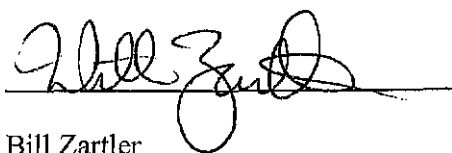
request such relief from the Commission as may be warranted.

IV. Conclusion

The Applicants submit that the information provided herein demonstrates that the public interest, convenience and necessity would be served by the grant of this Application. Therefore, the Applicants respectfully request that the Commission approve the Joint Application and grant all other relief as necessary and appropriate to authorize the completion of the sale of assets from the VarTec Companies to Comtel.

Respectfully submitted,

COMTEL TELCOM ASSETS LP

By: 
Bill Zartler

President

Comtel Telcom Assets LP

c/o Sowood Capital Management LP

500 Boylston Street, 17th Floor

Boston, Massachusetts 02116

Telephone: (713) 229-0068

Facsimile: (713) 229-0058

9-15-05

Date

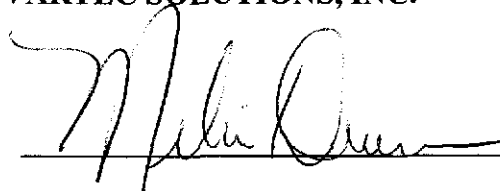
Respectfully submitted,

VARTEC TELECOM, INC.,

EXCEL TELECOMMUNICATIONS, INC.

AND VARTEC SOLUTIONS, INC.

By:



Melissa A. Drennan, Esq.

Assistant Secretary

VarTec Telecom, Inc.,

Excel Telecommunications, Inc. and

VarTec Solutions, Inc.

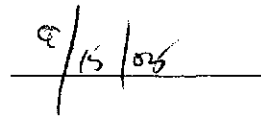
2440 Marsh Lane

Carrollton, Texas 75006

Telephone: (972) 478-3305

Facsimile: (972) 478-3310

e-mail: mdrennan@vartec.net

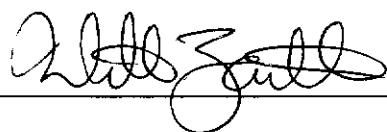


Date

VERIFICATION OF COMTEL TELCOM ASSETS LP

On behalf of Comtel Telcom Assets LP, I verify that the information contained in the foregoing Application is true to the best of my knowledge, except as to matters which are stated herein on information or belief, and as to those matters, I believe them to be true.

COMTEL TELCOM ASSETS LP

By: 

Bill Zartler

c/o Sowood Capital Management LP

500 Boylston Street, 17th Floor

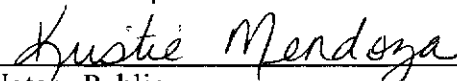
Boston, Massachusetts 02116

Telephone: (713) 229-0068

Facsimile: (713) 229-0058

State of Texas
County of Harris

Subscribed and sworn before me this 16 day of September, 2005.


Notary Public

My Commission Expires:

August 19, 2007



VERIFICATION OF VARTEC TELECOM, INC., EXCEL TELECOMMUNICATIONS,
INC. AND VARTEC SOLUTIONS, INC.

On behalf of VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc.,
I verify that the information contained in the foregoing Application are true to the best of my
knowledge, except as to matters which are stated herein on information or belief, and as to those
matters, I believe them to be true.

**VARTEC TELECOM, INC.,
EXCEL TELECOMMUNICATIONS, INC.
AND VARTEC SOLUTIONS, INC.**

By: _____

Melissa A. Drennan, Esq.

Assistant Secretary

VarTec Telecom, Inc.,

Excel Telecommunications, Inc. and

VarTec Solutions, Inc.

2440 Marsh Lane

Carrollton, Texas 75006

Telephone: (972) 478-3305

Facsimile: (972) 478-3310

e-mail: mdrennan@vartec.net

State of Texas
County of Dallas

Subscribed and sworn before me this 15th day of September, 2005.

Becky Gipson
Notary Public

My Commission Expires:

